

COUNTY COUNCIL

OF

HARFORD COUNTY, MARYLAND

BILL NO. 82-5

Introduced by: Council President Hardwicke at the request of the
County Executive

Legislative Day No. 82-2Date: January 12, 1982

AN ACT authorizing and empowering Harford County, Maryland, to issue and sell, as limited obligations of the County and not upon its full faith and credit, its industrial development revenue bonds, in the aggregate principal amount not to exceed \$1,000,000, pursuant to Sections 266A to 266-I, inclusive of Article 41 of the Annotated Code of Maryland (1978 Repl. Vol., 1981 Cum. Supp.), as amended, for the purpose of financing the acquisition of a certain industrial building to be located on Pulaski Highway in Havre de Grace and to be owned by D-D Foods, Inc., a Maryland corporation, and to be used as a retail supermarket; and generally providing for and determining various matters, details and procedures in connection therewith.

By the Council, January 12, 1982

Introduced, read first time, ordered posted and public hearing scheduled

on: February 9, 1982at: 6:30 P.M.By Order: Angela Markowski, Secretary

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on February 9, 1982 and concluded on February 9, 1982.

Angela Markowski, Secretary

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

Sections 266A to 266-I, inclusive, of Article 41 of the Annotated Code of Maryland (1978 Repl. Vol., 1981 Cum. Supp.), as amended (the "Act"), empower all the counties and municipalities of the State of Maryland to borrow money by issuing revenue bonds for the purpose of financing the costs of acquiring any industrial building or buildings (as defined in the Act). The Act declares it to be the legislative purpose to relieve conditions of unemployment in the State of Maryland, to encourage the increase of industry and a balanced economy in the State of Maryland, to assist in the retention of existing industry in the State of Maryland through the control, reduction or abatement of pollution of the environment (where proceeds of the bonds are used for that purpose), to promote economic development, to protect natural resources and in this manner to promote the health, welfare and safety of the residents of each of the counties and municipalities of the State of Maryland.

Harford County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the "County"), received a letter of intent dated August 7, 1981 (the "Initial Letter of Intent") from Bi-Lo Foods, Inc., a Maryland corporation ("Bi-Lo") pursuant to which Bi-Lo requested the County to participate in the financing of the acquisition (within the meaning of the Act) of an industrial building and/or buildings (within the meaning of the Act) to be located in Harford County, Maryland by the issuance and sale by the County of its industrial development revenue bonds in the aggregate principal amount not to exceed \$1,500,000 pursuant to and in accordance with the Act.

The County Council of Harford County adopted Resolution No. 34-81 on August 11, 1981 (the "Initial Resolution") and therein stated and declared the present intention of the County to participate in the financing of the building or buildings by issuing and delivering its industrial development revenue bonds in the aggregate principal amount not exceeding \$1,500,000 and by loaning the proceeds thereof to

1 Bi-Lo to finance a portion of the cost of the acquisition of the
2 building or buildings as generally described in the Initial Letter of
3 Intent.

4 The County received a second letter of intent dated January 5,
5 1982 ("Amended Letter of Intent") from D-D Foods, Inc. (the "Industrial
6 Concern") and Bi-Lo pursuant to which the Industrial Concern and Bi-Lo
7 advised the County that the Industrial Concern would be substituted for
8 Bi-Lo as the Industrial Concern, that only the Havre de Grace store was
9 to be acquired as the Industrial Building and that only \$1,000,000 in
10 the County's Industrial Development Revenue Bonds was requested. The
11 Amended Letter of Intent stated that Bi-Lo agreed to the substitution of
12 the Industrial Concern and withdrew its request for financing, agreeing
13 to absolve the County of any commitment to loan the proceeds of the
14 Bonds to it. The Amended Letter of Intent proposed that the County loan
15 the proceeds of the Bonds to the Industrial Concern for the acquisition
16 of the Havre de Grace store only (the "Industrial Building").

17 The County Council of Harford County adopted Resolution 3-82
18 on January 12, 1982 (the "Inducement Resolution") and therein stated the
19 present intention of the County to issue and deliver its industrial
20 development revenue bonds in the aggregate principal amount not
21 exceeding \$1,000,000 and to loan the proceeds thereof to the Industrial
22 Concern for the acquisition and improvement of the Industrial Building.
23 By the Inducement Resolution, the County Council withdrew the expressed
24 intention of the County to loan the proceeds to Bi-Lo and, by the
25 adoption of the Inducement Resolution and acceptance of the Amended
26 Letter of Intent, absolved the County of any obligation to lend the
27 proceeds to Bi-Lo.

28 The Industrial Building, which is an "industrial building" as
29 defined in Section 266A of the Act, will consist of the acquisition of a
30 leasehold interest in land and improvements in a former Pantry Pride
31 store containing approximately 22,578 square feet of store space located
32 at 2113 Pulaski Highway, Havre de Grace, Harford County, Maryland on

land owned by National Realty and Development Corporation. The Industrial Concern will operate the Industrial Building as a retail supermarket.

Based upon the findings and determinations set forth in the Inducement Resolution and the findings and determinations set forth below, the County has determined to participate in the financing of the Industrial Building by the issuance, sale and delivery, at any time or from time to time and in one or more series, of its industrial development revenue bonds, in the aggregate principal amount not to exceed \$1,000,000 (the "Bonds"), and by loaning the proceeds of the Bonds of any series to the Industrial Concern upon the terms and conditions of one or more loan agreements or other similar agreements to be entered into between the County and the Industrial Concern (a "Loan Agreement"), as permitted by the Act, such proceeds to be used by the Industrial Concern solely to finance the acquisition of the Industrial Building.

Any Loan Agreement entered into with respect to the Bonds of any series will require (a) the Industrial Concern and the County to use the proceeds of the Bonds of such series solely to finance the acquisition of the Industrial Building, and (b) the Industrial Concern to make payments which will be sufficient to enable the County to pay the principal of and interest and premium, if any, on the Bonds of such series when and as the same become due and payable.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACT:

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND, That acting pursuant to the Act, it is hereby found and determined as follows:

(1) The issuance and sale of the Bonds by the County, pursuant to the Act, for the sole and exclusive purpose of financing the acquisition (within the meaning of the Act) of the Industrial Building will facilitate and expedite the acquisition of the Industrial Building.

1 (2) The acquisition of the Industrial Building and the
2 financing thereof as provided in this Ordinance will promote the
3 declared legislative purposes of the Act by (a) sustaining jobs and
4 employment and aiding in maintaining and increasing employment, thus
5 relieving conditions of unemployment in the State of Maryland and in
6 Harford County; (b) encouraging the increase of industry and the
7 creation of a balanced economy in the State of Maryland and in Harford
8 County; (c) assisting in the retention of existing industry in the State
9 of Maryland and in Harford County; (d) promoting economic development;
10 and (e) promoting the health, welfare and safety of the residents of
11 Harford County and of the State of Maryland.

12 (3) In addition to authorizing the County itself to
13 construct industrial buildings and either to lease or to sell such
14 buildings to the Industrial Concern, the Act, as an alternative
15 procedure, also authorizes industrial building financing to be
16 accomplished in the form of a loan to the Industrial Concern. The loan
17 form of transaction avoids indirect costs and burdens on the County by
18 not requiring any direct involvement by the County in the acquisition,
19 ownership or administration of the Industrial Building, while permitting
20 ample controls to be imposed on the use of the proceeds of the Bonds to
21 insure that the public purposes of the Act are fully accomplished. It
22 is, therefore, in the best interests of the citizens of the County to
23 finance the acquisition of the Industrial Building by a loan to the
24 Industrial Concern. This Ordinance contemplates transaction in the form
25 of a loan of the proceeds of the Bonds by the County to the Industrial
26 Concern, rather than a transaction in the form of a lease or sale of the
27 Industrial Building to the Industrial Concern.

28 (4) Neither the Bonds nor the interest thereon shall ever
29 constitute an indebtedness or general obligation of the County or a
30 charge against, or pledge of, the general credit or taxing powers of the
31 County, within the meaning of any constitutional or charter provision or
32 statutory limitation, and neither shall ever constitute or give rise to

1 any pecuniary liability of the County. The Bonds and the interest
2 thereon shall be limited obligations of the County, repayable by the
3 County solely from the revenue derived from loan repayments (both
4 principal and interest) made to the County by the Industrial Concern
5 under the applicable Loan Agreement and from any other moneys made
6 available to the County for such purpose. Neither the proceeds of the
7 Bonds nor the payments of the principal of and premium (if any) and
8 interest on the Bonds will be commingled with the County's funds or will
9 be subject to the absolute control of the County, but will be subject
10 only to such limited supervision and checks as are deemed necessary or
11 desirable by the County to insure that the proceeds of the Bonds are used
12 to accomplish the public purposes of the Act and this Ordinance. The
13 transactions authorized hereby do not constitute any physical public
14 betterment or improvement or the acquisition of property for public use
15 or the purchase of equipment for public use. The public purposes
16 expressed in the Act are to be achieved by facilitating the acquisition
17 of the Industrial Building by the Industrial Concern.

18 (5) The security for the Bonds of any series shall be
19 solely and exclusively (a) the absolute, irrevocable and unconditional
20 obligation of the Industrial Concern to make the payments required by
21 the Loan Agreement entered into with respect to the Bonds of such
22 series, (b) moneys realized from the liquidation of any lien and
23 security interest created by such Loan Agreement and of any other lien
24 or security interest created with respect to any property as security
25 for the Bonds of such series or the related Loan as the County Council
26 of the County (the "County Council") may provide for and approve by a
27 resolution or resolutions to be adopted by the County Council prior to
28 the issuance, sale and delivery of the Bonds of such series (an
29 "Administrative Resolution"), and (c) moneys realized from any guaranty
30 of the Bonds of such series or the related Loan as the County Council
31 may provided for and approve in an Administrative Resolution.
32

1 (6) As required by Section 266G of the Act, the County
2 does hereby set aside and pledge the income and revenue of the County
3 from the Industrial Building into a separate and special fund to be used
4 and applied in payment of the cost thereof. However, none of such
5 income and revenue shall be set aside as a depreciation account (as
6 described in the Act), because such account would (a) be inconsistent
7 with the transactions authorized hereby, and (b) place an unreasonable
8 burden on the Industrial Concern so as to adversely affect the
9 feasibility of the transaction and thus frustrate the legislative
10 purposes of the Act. The Industrial Concern shall covenant and agree to
11 properly operate and maintain the Industrial Building during the time
12 any of the Bonds are outstanding. If the Bonds of any series are
13 secured by a lien on or security interest in the Industrial Building,
14 such covenant and agreement shall include a specific undertaking by the
15 Industrial Concern to make all equipment replacements and repairs
16 necessary to insure that the security for the Bonds of such series shall
17 not be impaired.

18 (7) The Bonds of each series shall be authorized, issued,
19 sold and delivered without direct or indirect costs to the County, and
20 to that end, the County Executive shall provide for the payment directly
21 by the Industrial Concern of all necessary expenses of preparing,
22 printing and selling the Bonds of each series and other costs
23 contemplated and permitted by the Act, including (without limitation)
24 any and all costs, fees and expenses incurred by or on behalf of the
25 County in connection with the authorization, issuance, sale, delivery
26 and administration of the Bonds of each series and all costs incurred in
27 connection with the development of the appropriate legal documents,
28 including (without limitation), the fees of bond counsel to the County
29 and compensation to any person (other than full-time employees of the
30 County) or entity performing services for or on behalf of the County in
31 connection with the transactions contemplated by this Ordinance, whether
32 or not the proposed financing is consummated.

1 (8) As evidenced by the Amended Letter of Intent, the
2 Industrial Building is to be acquired by and for use by the Industrial
3 Concern, an "industrial concern" and a "bona fide tenant or purchaser"
4 within the meaning of the Act.

5 SECTION 2. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
6 HARFORD COUNTY, MARYLAND, That this Ordinance, among other things, and
7 the Inducement Resolution evidence the intent of the County to issue,
8 sell and deliver the Bonds authorized hereby in accordance with the
9 terms hereof. The County and the Industrial Concern contemplate that,
10 upon the enactment of this Ordinance, the Industrial Concern may
11 commence the acquisition of the Industrial Building prior to the
12 issuance, sale and delivery of the Bonds.

13 SECTION 3. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
14 HARFORD COUNTY, MARYLAND, That the County is hereby authorized and
15 empowered to issue, sell and deliver the Bonds at any time or from time
16 to time and in one or more series, in the aggregate principal amount not
17 to exceed \$1,000,000, subject to the provisions of this Ordinance. The
18 County will lend the proceeds of the Bonds of any series to the
19 Industrial Concern pursuant to the terms and provisions of a Loan
20 Agreement, to be used by the Industrial Concern for the sole and
21 exclusive purpose of financing the acquisition of the Industrial
22 Building. The Bonds of any series and the interest thereon shall be
23 limited obligations of the County, repayable by the County solely from
24 the revenue derived from payments made to the County by the Industrial
25 Concern pursuant to the Loan Agreement entered into with respect to the
26 Bonds of such series, and from any other moneys made available to the
27 County for such purpose. The security for the Bonds of any series shall
28 be solely and exclusively as provided in Section 1 of this Ordinance.

29 SECTION 4. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
30 HARFORD COUNTY, MARYLAND, That the Bonds may be issued at any time or
31 from time to time and in one or more series, and each series of the
32 Bonds shall be identified by the year of issue or other appropriate

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1 designation. Unless otherwise provided by the County Council in an
 2 Administrative Resolution, each of the Bonds shall bear the descriptive
 3 title "Harford County, Maryland Industrial Development Revenue Bond"
 4 (D-D Foods, Inc. Project); provided, that the descriptive title may
 5 contain such other descriptive information as the County Council may
 6 prescribe in an Administrative Resolution (e.g. "1981 Series B").

7 SECTION 5. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
 8 HARFORD COUNTY, MARYLAND, That the Bonds of any series, which may be
 9 engraved, printed or typewritten, shall:

10 (a) be executed, issued and delivered in such amount or
 11 amounts, not exceeding \$1,000,000, in the aggregate, unless that amount
 12 is increased by an Ordinance supplemental hereto,

13 (b) bear interest at such rate or rates,

14 (c) be dated,

15 (d) be in such denominations,

16 (e) be of such form and tenor,

17 (f) be payable, both as to principal and interest, in
 18 such amounts, from and at such times (not later than 30 years from the
 19 date thereof) and at such place or places, and

20 (g) be subject to redemption prior to their stated
 21 maturity on such terms and conditions, all as the County Council may
 22 prescribe, determine or provide for in an Administrative Resolution.

23 SECTION 6. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
 24 HARFORD COUNTY, MARYLAND, That the Bonds shall be executed in the name
 25 of the County and on its behalf by the County Executive of the County,
 26 by his manual or facsimile signature, and the corporate seal of the
 27 County or a facsimile thereof shall be impressed or otherwise reproduced
 28 thereon and attested by the Director of Administration of the County, by
 29 his manual signature. Any Loan Agreement and, where applicable, all
 30 other documents as the County Council shall deem necessary to effectuate
 31 the issuance, sale and delivery of the Bonds of any series, shall be
 32 executed in the name of the County and on its behalf by the County

1 Executive of the County by his manual signature, and the corporate seal
2 of the County or a facsimile thereof shall be impressed or otherwise
3 reproduced thereon and attested by the Director of Administration of the
4 County by his manual signature. In case any officer whose signature or
5 a facsimile of whose signature shall appear on the Bonds of any series
6 or any of the aforesaid documents shall cease to be such officer before
7 the delivery of the Bonds of such series or any of the other aforesaid
8 documents, such signature or such facsimile shall nevertheless be valid
9 and sufficient for all purposes, the same as if such officer had
10 remained in office until delivery. The County Executive of the County,
11 the Director of Administration of the County and other officials of the
12 County are hereby authorized and empowered to do all such acts and
13 things and execute such documents and certificates as the County Council
14 may determine in an Administrative Resolution to be necessary to carry
15 out and comply with the provisions hereof; and, upon the enactment of
16 this Ordinance, such officials are hereby authorized and empowered to
17 prepare and distribute, in conjunction with representatives of the
18 Industrial Concern and the prospective purchasers of or underwriters for
19 the Bonds of any series, both a preliminary and a final official
20 statement in connection with the sale of the Bonds of any series, if
21 such preliminary official statement and final official statement are
22 determined to be necessary or desirable for the sale of the Bonds of
23 such series, provided, however, that any such preliminary official
24 statement shall be clearly marked to indicate that it is subject to
25 completion and amendment.

26 SECTION 7. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
27 HARFORD COUNTY, MARYLAND, That prior to the issuance, sale and delivery
28 of the Bonds of any series, the County Council shall adopt an
29 Administrative Resolution, pursuant to which the County Council may
30 (without limitation):

31 (a) prescribe the form, tenor, terms and conditions of
32 security for the Bonds of such series;

1 (b) prescribe the amounts, rate or rates of interest,
2 denominations, date, maturity or maturities (within the limits herein
3 prescribed), and the time and place or places of payment of the Bonds of
4 such series, and the terms and conditions and details under which the
5 Bonds of such series may be called for redemption prior to their stated
6 maturity;

7 (c) if necessary, appoint a trustee, a bond registrar and
8 a paying agent or agents for the Bonds of such series;

9 (d) approve the form and contents, and authorize the
10 execution and delivery (where applicable) of a Loan Agreement and such
11 other documents, including (without limitation) trust agreements,
12 assignments, guaranties and security instruments to which the County is
13 a party and which may be necessary to effectuate the issuance, sale and
14 delivery of the Bonds of such series;

15 (e) determine the time of execution, issuance, sale and
16 delivery of the Bonds of such series and prescribe any and all other
17 details of the Bonds of such series;

18 (f) provide for the direct payment by the Industrial
19 Concern of all costs, fees and expenses incurred by or on behalf of the
20 County in connection with the authorization, issuance, sale, delivery
21 and administration of the Bonds of such series, including (without
22 limitation) costs of printing (if any) and issuing the Bonds of such
23 series, legal expenses (including the fees of bond counsel) and
24 compensation to any person (other than full-time employees of the
25 County) performing services by or on behalf of the County in connection
26 therewith;

27 (g) provide for the issuance and sale (subject to the
28 passage at the time of an appropriate ordinance authorizing the same, if
29 necessary) of one or more series of additional bonds and one or more
30 series of refunding bonds; and

31 (h) do any and all things, and authorize the officials of
32 the County to do any and all things, necessary, proper or expedient in

1 connection with the issuance, sale and delivery of the Bonds of such
2 series.

3 SECTION 8. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
4 HARFORD COUNTY, MARYLAND, That, as authorized by the Act, unless, at the
5 request of the Industrial Concern the County Council provides in an
6 Administrative Resolution for the public sale of the bonds of any
7 series, the Bonds of each series shall be sold by private (negotiated)
8 sale upon such terms and conditions as shall be approved by the County
9 Council in an Administrative Resolution.

10 SECTION 9. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
11 HARFORD COUNTY, MARYLAND, That the provisions of this Ordinance are
12 severable, and if any provisions, sentence, clause, section or part
13 hereof is held illegal, invalid or unconstitutional or inapplicable to
14 any person or circumstances, such illegality, invalidity or
15 unconstitutionality, or inapplicability shall not affect or impair any
16 of the remaining provisions, sentences, clauses, sections, or parts of
17 this Ordinance or their application to other persons or circumstances.
18 It is hereby declared to be the legislative intent that this Ordinance
19 would have been passed if such illegal, invalid or unconstitutional
20 provision, sentence, clause, section or part had not been included
21 herein, and if the person or circumstances to which this Ordinance or
22 any part hereof are inapplicable had been specifically exempted
23 herefrom.

24 SECTION 10. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL
25 OF HARFORD COUNTY, MARYLAND, That this Ordinance has no financial impact
26 on Harford County, Maryland and, therefore, there is no requirement for
27 a fiscal impact note.

28 SECTION 11. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
29 HARFORD COUNTY, MARYLAND, That the Industrial Building and the sale of
30 the Bonds therefor shall not constitute a capital project within the
31 meaning of the Harford County Charter or Code.
32

SECTION 12. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
HARFORD COUNTY, MARYLAND, That the Bonds must be issued and sold within
six (6) months from the date on which this Ordinance becomes law;
provided, however, that the County Council, after a showing of good
cause after a public hearing held before the County Council prior to or
after the expiration of such six (6) month period, may by administrative
resolution extend the period during which the Bonds may be issued and
sold for such additional terms not to exceed six (6) months in the
aggregate from the date on which the first six (6) month period expired.
The County Council, in its sole discretion, shall determine the
sufficiency, or lack thereof, of the reasons presented for any requested
extension of the six (6) month period. If an extension is granted,
notice of such extension and the reasons therefor must be sent to the
County Executive. If the Bonds are not issued and sold within said six
(6) month period or any approved extension thereof, the authority
provided in this Ordinance for the County to issue and sell the Bonds
shall expire.

SECTION 13. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL
OF HARFORD COUNTY, MARYLAND, That this Ordinance shall take effect 60
days after the date that it becomes law.

EFFECTIVE: April 12, 1982

*The Secretary of the Council does hereby
certify that fifteen (15) copies of this Bill
are immediately available for distribution to
the public and the press.*

Angela Markowski, Secretary

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BY THE COUNCIL

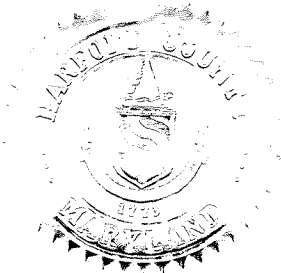
Read the third time, BILL NO. 82-5

Passed LSD 8205 (February 9, 1982) ~~(with amendments)~~~~Failed on Passage~~

By order

Angela Markowski, Secretary

Sealed with the County Seal and presented to the County Executive
for his approval this 10th day of February, 1982
at 3:00 o'clock P.M.

Angela Markowski, Secretary

BY THE EXECUTIVE

APPROVED:

John J. Spring
County ExecutiveDate February 11, 1982

BY THE COUNCIL

This Bill (No. 82-5), having been approved by the Executive
and returned to the Council, becomes law on February 11, 1982.

Angela Markowski, Secretary

Rec'd & Recorded 4-26 1982 at 2:00 P.M.
Liber 7 Folio 376 & examined per
H. Douglas Chilcoat, Clerk, Harford Co.

EFFECTIVE DATE: April 12, 1982

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